

Congress of the United States
Washington, DC 20515

February 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EPA Policy on Regulating Street Cars Modified to Become Racecars

Dear Administrator McCarthy:

Thank you for your testimony of February 11, 2016 before the House Committee on Agriculture regarding the impact of actions taken by the Environmental Protection Agency (EPA) on the rural economy. This letter revisits an issue we raised at the hearing, as we are concerned that the EPA is advancing a rulemaking that would make it illegal to modify a certified street vehicle into a racecar.

As you noted at the hearing, the Clean Air Act excludes from EPA regulation vehicles that are used solely for competition (aka "racecars"). The longstanding definition of "motor vehicle" only applies to a "self-propelled vehicle designed for transporting persons or property on a street or highway." When Congress amended the law in 1990 to provide authority to the EPA to regulate nonroad vehicles, it specifically excluded "vehicles used solely for competition" from the definition of "nonroad vehicle"¹ in order to affirm the exclusion.

At issue is a proposal contained in the greenhouse gas regulations² to "clarify" that the EPA deems any entity or individual who modifies a vehicle to become a racecar to have engaged in an act of tampering if the vehicle is no longer emissions-compliant as originally certified. For example, if finalized, the proposal would apply to a street vehicle that has been taken off the streets, unregistered by the owner and state authorities, converted into a racecar by modifying the intake, exhaust system and tune, and trailered to the track. The individual or shop that performed the modifications would have engaged in tampering and be subject to civil penalties. If sold, the new owner would also be exposed to civil penalties, since the vehicle would still have a VIN demonstrating that it was once a certified vehicle that has been converted.

¹ See 42 U.S.C. § 7550(10)-(11) (2015).

² Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2, 80 Fed. Reg. 40,138 (July 13, 2015), docket no. EPA-HQ-OAR-2014-0827.

The "clarification" language would be contained in the compliance prohibitions for light-duty vehicles and trucks, and heavy duty vehicles. The text is found at page 429 of the proposed greenhouse gas rule, as follows:

**Subpart S--General Compliance Provisions for Control of Air Pollution From
New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles**

67. Section 86.1854-12 is amended by adding paragraph (b)(5) to read as follows:

§ 86.1854-12 Prohibited acts.

* * * * *

(b) * * *

(5) Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3).

Within the rulemaking, the EPA argues that it is simply clarifying longstanding EPA policy. We beg to differ.

As you are aware, Americans have been modifying their vehicles and converting them into racecars for generations. The policy is incorporated in the name "National Association for Stock Car Auto Racing" (NASCAR). Beyond that obvious example, millions of enthusiasts go to a wide variety of tracks every year to race or watch formerly-certified vehicles compete, from sports cars to motorcycles, and everything in-between. This is an important part of our American automotive heritage.

The rule would have a devastating economic impact were it to take effect. Jobs would be lost due to cancelled product sales and installations. Enthusiasts would be deprived of the opportunity to race their modified vehicles. Track events would be cancelled. Individuals and entities ignoring the policy would be exposed to enforcement and civil penalties.

Despite these obvious consequences, no economic analysis was undertaken by the EPA when issuing the proposed rule. The impact on small businesses was also not considered.

Motorsports generate enormous benefits for the American public in the form of new safety, efficiency, and emission technologies that are later incorporated into motor vehicles used on public roads, yet with this rule the EPA imposes regulations that stifle innovation and technological advancement.

Congress, through the Clean Air Act, has already provided the EPA with the tools it needs to enforce against software and auto parts manufacturers that sell products which defeat emissions control systems on vehicles used on public roads. Regulators have also enforced against distributors and retailers of such products. While the EPA has issued a statement that it "has not taken an enforcement action for tampering against a vehicle owner where the owner has proven the vehicle was used exclusively for racing," that is hardly reassuring. The EPA's prohibition

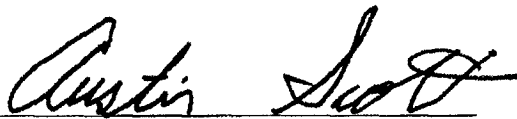
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mandate applies to "anyone" who has tampered, including the owner. As described above, this new policy would provide the EPA with sweeping enforcement capabilities that were never intended or authorized by Congress.

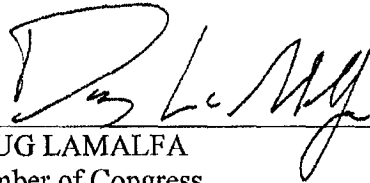
Given this background, we respectfully request confirmation that a motor vehicle may legally be modified from its certified configuration into a vehicle used solely for competition. Assuming this is current EPA policy, please confirm that all references to the proposed new policy will be removed from the subject greenhouse gas rule when it is finalized. Conversely, if this is not the EPA's current policy, please provide justification to counter our contention that Congress has defined otherwise through the Clean Air Act and its legislative history.

We would appreciate your prompt consideration of this request since the EPA is in the process of finalizing the rule. Please do not hesitate to contact us if you have any questions.

Sincerely,



AUSTIN SCOTT
Member of Congress



DOUG LAMALFA
Member of Congress